

HOUSE No. 1485

By Mr. Koutoujian of Waltham, petition of Peter J. Koutoujian and others for legislation to promote fiscal stability and growth of emerging technology and biotechnology companies. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

PETITION OF:

Peter J. Koutoujian	Robert K. Coughlin
Michael J. Rodrigues	John A. Hart
Barry R. Finegold	Mary E. Grant
Kevin G. Honan	Stephen M. Brewer
John W. Scibak	Thomas J. O'Brien
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In the Year Two Thousand and Five.

AN ACT TO PROMOTE FISCAL STABILITY AND GROWTH OF EMERGING TECHNOLOGY AND BIOTECHNOLOGY COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Chapter 40J of the General Laws is hereby amended by adding
- 2 after section 12 the following sections:
- 3 Section 13. As used in section 13 and section 14, the following
- 4 words shall, unless the context clearly requires otherwise, have
- 5 the following meanings:
- 6 "Affiliated company" means a company that is same entity
- 7 directly or indirectly or owns or controls 5% or more of the voting
- 8 rights or 5% or more of the value of all classes of stock of the cor-
- 9 poration surrendering the tax benefit.
- 10 "Corporation" shall be the Massachusetts Technology Develop-
- 11 ment Corporation, established pursuant to section 2 of chapter 40G
- 12 of the General Laws.
- 13 "New or Expanding Company" means a corporation that: (1) has
- 14 significant operations in the Commonwealth and (2) has 250 or

15 fewer employees, of whom at least 75% are Massachusetts based
16 employees filling a position or job in the Commonwealth.

17 “Biotechnology company” is a business primarily engaged in
18 the research, development, production, or provision of biotech-
19 nology for the purpose of developing or providing products or
20 processes for specific commercial or public purposes, including,
21 but not limited to, medical pharmaceutical, nutritional, and other
22 health-related purposes or an entity engaged in providing services
23 or products necessary for such research, development, production,
24 or provision.

25 “Emerging technology company” means an entity whose head-
26 quarters or base of operations is located in Massachusetts, and
27 who employs some combination of the following: highly educated
28 or trained managers and workers, or both, employed in Massachu-
29 setts who use sophisticated scientific research service or produc-
30 tion equipment, processes or knowledge to discover, develop, test,
31 transfer or manufacture a product or service.

32 “Tax Benefit” means the amount of research and development
33 tax credit, the amount of Investment Tax Credit (ITC), and the
34 amount of unused net operating loss carryover that has not been
35 applied to the current tax year.

36 Section 14. (a) The Corporation shall establish the Massachu-
37 setts Tax Credit Certificate Program, a corporate business tax ben-
38 efit transfer program to allow new or expanding emerging
39 technology and biotechnology companies with tax benefits to sur-
40 render those tax benefits for use by other corporate business tax-
41 payers in the state. (b) The Corporation, with the assistance of the
42 Department of Revenue, shall review and approve applications by
43 new or expanding companies with unused but otherwise allowable
44 tax benefits to surrender those tax benefits in exchange for private
45 financial assistance to be made by the corporate business taxpayer
46 that is equal to at least 75% of the amount of the surrendered tax
47 benefit. The company surrendering the tax benefits shall not be an
48 affiliated company to the corporate business taxpayer that pur-
49 chases those surrendered benefits. All applications must be
50 received on or before June 30 for the next succeeding state fiscal
51 year. (c) The Corporation may consider the following criteria Pro-
52 gram eligibility: (1) the company’s long term viability; (2) whether
53 the company’s products are sufficiently innovative to provide a

54 competitive advantage; (3) whether the company has sufficient
55 resources to operate in the short term; and (4) whether the pro-
56 posed financial assistance will result in growth in permanent, full-
57 time employment in the state. (d) The Corporation may require
58 certifications or audits to determine compliance with subsection
59 (c) of this section. (e) The total amount of the tax credit transfers
60 authorized by the Corporation shall not exceed \$20,000,000 for
61 any given year. The maximum lifetime value of tax benefits that a
62 company shall be allowed to surrender shall not exceed
63 \$5,000,000. No application shall be approved in which the new or
64 expanding company (1) has demonstrated positive net income in
65 any of the two previous full years of ongoing operations as deter-
66 mined on its financial statements; or (2) has demonstrated a ratio
67 in excess of 110% or greater of operating revenues divided by
68 operating expenses in any of the two previous full years of opera-
69 tions as determined on its financial statements; or (3) is directly or
70 indirectly at least 50% owned or controlled by another corporation
71 that has demonstrated positive net income in any of the two pre-
72 vious full years of ongoing operations as determined on its finan-
73 cial statements or is part of a consolidated group of affiliated
74 corporations, as filed for federal income tax purposes, that in the
75 aggregate has demonstrated positive net income in any of the two
76 previous full years of ongoing operations as determined on its com-
77 bined financial statements. Companies more than 50% owned by
78 venture capital firms or other investor partnerships shall be eligible
79 for participation in the Massachusetts Tax Credit Certificate Pro-
80 gram. (f) The Corporation shall issue Corporation Business Tax Ben-
81 efit Certificates to successful applicants. (g) A corporation that
82 acquires a Corporation Business Tax Benefit Certificate shall enter
83 into a written agreement with the new or expanding company con-
84 cerning the terms and conditions of the private financial assistance
85 made in exchange for the Corporation Business Tax Benefit Certifi-
86 cate. (h) Any new or expanding business who is applies for a Tax
87 Benefit Certificate under this program shall pay a non-refundable fee
88 of \$1,000 for their first application and a \$500 fee for their second
89 and subsequent applications. (i) The Corporation, in consultation
90 with the Department of Revenue, shall develop additional criteria for
91 program eligibility and promulgate regulations as deemed necessary
92 to implement these sections.